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FIDUCIARY OBLIGATIONS IN THE INTERNAL POLITICAL AFFAIRS OF LABOR UNIONS UNDER SECTION 501(a) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

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INTRODUCTION

Since the enactment of the Labor-Management Reporting and Disclosure Act (LMRDA) in 1959,[1] the federal courts have been unable to agree upon a consistent determination of the limits of the fiduciary obligations of union officials under section 501(a).[2] Generally, the decisions tend to fall into two categories — the restrictive, or "narrow" view of the fiduciary obligations, and the expansive, or "broad" view of the obligations. The narrow view, espoused by the

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[1] 29 U.S.C. §§ 401 *et seq.* (1970) [hereinafter "LMRDA"].

[2] Section 501(a) of the LMRDA provides:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organizations as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

29 U.S.C. § 501(a) (1970).

Second Circuit,[3] restricts application of section 501(a) to union affairs involving money and property; the broad view, first announced by the Eighth Circuit,[4] applies fiduciary obligations to a wide range of union activities.

Despite their differences in approach, courts applying either view tend to apply inflexible standards to the conduct of union officers. While the statute itself mandates that the duty of all officers be determined "taking into account the special problems and functions of a labor organization . . . ,"[5] few courts seem to have recognized this caveat in evaluating the conduct of union officials. Both the narrow and broad interpretations involve the application of inflexible standards to the conduct of officers of *all* labor organizations, large or small, strong or weak, without regard to the type of union involved. The net result has been the emergence of a per se type of reasoning wherein courts hold certain types of acts by union officials conclusively violative of section 501(a).[6]

This discussion will first focus upon the legislative history and text of section 501(a) to determine the congressional purpose in enacting the section. Second, the decisional evolution of the narrow and broad judicial interpretations of section 501(a) will be reviewed. Finally, a flexible approach to the application of section 501(a) will be proposed and such an approach will be examined in the context of four recurrent patterns of internal union politics. It will be demonstrated that courts should not deem acts of union officials per se violative of section 501(a) where union political matters are involved, but rather should examine the challenged activities in the context of the particular union and circumstances involved.

I. AN OVERVIEW OF SECTION 501(a) AND ITS LEGISLATIVE HISTORY

The legislative history of section 501(a)[7] clearly reveals a congressional intent that the fiduciary obligations imposed on union officials should extend beyond the management of "money or other property." Indeed, various provisions limiting fiduciary obligations to

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[3] See text and notes 22-40 *infra*.

[4] See text and notes 41-87 *infra*.

[5] 29 U.S.C. § 501(a) (1970).

[6] This per se approach is similar to the per se reasoning utilized by courts with regard to violations of § 1 of the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.* (Supp. V 1975). *See, e.g.*, United States v. Topco Assocs., Inc., 405 U.S. 596, 606-08 (1972); Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 5 (1958); United States v. E. I. Dupont de Nemours & Co., 351 U.S. 377, 387 (1956).

[7] The complete legislative history of the LMRDA has been published by the National Labor Relations Board. *See* NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (1959) [hereinafter "LEGISLATIVE HISTORY"]. Moreover, the history of § 501 has been examined by several commentators. *See, e.g.*, Clark, *The Fiduciary Duties of Union Officials under Section 501 of the LMRDA*, 52 MINN. L. REV. 437, 440-44 (1967); Note, 75 COLUM. L. REV. 1189, 1190-91 (1975); Note, 5 GOLDEN GATE L. REV. 367, 375-76 (1975); Comment, 37 LA. L. REV. 875 (1977).

money or other property were explicitly rejected by both houses of Congress.

As reported by the Senate Committee on Labor and Public Welfare, Senate Bill 1555 originally contained no provision whatever imposing fiduciary responsibilities on union officials.[8] After amendments were offered on the Senate floor, however, the final version of the Senate bill included fiduciary obligations[9] limited to money and property matters.[10]

By contrast, House Bill 8342, passed by the House of Representatives, contained a provision imposing broad fiduciary obligations on union officials from the outset.[11] Specifically, the House Report accompanying the bill explained that:

> [t]he Committee bill is broader and stronger than the provisions of S.1555 which relate to fiduciary responsibilities. S.1555 applied the fiduciary principle to union officials only in their handling of "money or other property" (see S.1555, sec. 610), apparently leaving other questions to the common law of the several states. Although the common law covers the matter, we considered it important to write the fiduciary principle explicitly into Federal labor legislation. Accordingly, *the committee bill extends the fiduciary principle to all the activities of union officials and other union agents or representatives.*[12]

The House version of section 501(a) was eventually adopted as the official version. The legislative history of that section explicitly reveals that it was *not* intended to limit the fiduciary obligations of union officials to "money or other property," but rather was intended to in-

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[8] *See* 105 CONG. REC. 5985-91 (1959), *reprinted in* I LEGISLATIVE HISTORY, *supra* note 7, at 1020-25.

However, Minority Views accompanying Senate Report No. 187 deplored the absence of such a provision and promised a floor amendment "designed to fill this unjustifiable vacuum." S. REP. NO. 187, 86th Cong., 1st Sess. 72 (1959), *reprinted in* I LEGISLATIVE HISTORY, *supra* note 7, at 397, 468.

[9] The amendment was accepted by the Senate on April 23, 1959, two days before Senate passage of S. 1555. *See* 105 CONG. REC. 6523-28 (1959), *reprinted in* II LEGISLATIVE HISTORY, *supra* note 7, at 1128-34.

[10] § 610 of S. 1555, as it passed the Senate, contains the following language:

> Every officer, agent, or other representative of a labor organization engaged in an industry affecting commerce, or of a trust in which such organization is interested, shall, with respect to any money or other property in his custody or possession by virtue of his position as such officer, agent, or representative, have a relationship of trust to any such labor organization and the members thereof, or to any such trust and the beneficiaries thereof, and shall be responsible in a fiduciary capacity for such money or other property, notwithstanding any exculpatory clause or action purporting to except him from such responsibility.

See I LEGISLATIVE HISTORY, *supra* note 7, at 576-77.

[11] *See* H.R. 8342, § 501, 86th Cong., 1st Sess. (1959), *reprinted in* I LEGISLATIVE HISTORY, *supra* note 7, at 730-32.

[12] H.R. REP. NO. 741, 86th Cong., 1st Sess. 81 (1959), *reprinted in* I LEGISLATIVE HISTORY, *supra* note 7, at 839 (emphasis added).

corporate into federal labor legislation "a large body of existing law applicable to trustees, and a wide variety of agents."[13]

The text of section 501 itself is also revealing. The first sentence of section 501(a) states merely that there exists a trust relationship between union officers and their union; it imposes no explicit duties.[14] The enforceable duties imposed on union officers appear in the second sentence of the section, which applies fiduciary obligations to: (1) holding, managing, and spending of union funds; (2) dealing with the union as an adverse party; and (3) acquiring or holding any interest which conflicts with the interests of the labor organization.[15] The enforcement mechanism of section 501 is found in section 501(b),[16] which provides a procedure by which any member of a labor organization can sue "[w]hen any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section . . . ."[17]

A close reading of subsections (a) and (b) of section 501 clearly indicates that despite the breadth of the fiduciary obligation it is the enumerated duties of section 501(a) which comprise the enforceable legal obligations. Thus, despite the fact that it may be necessary for a court to evaluate whether certain conduct is in the best interests of the members of a labor organization, the language of section 501 establishing the existence of a fiduciary relationship between union representatives and union members should not be construed as an invitation to courts to impose their views regarding the management of the internal affairs of labor organizations.

The nature of the fiduciary obligation owed to an organization necessarily varies with the type of organization involved and the problems confronted by it. Section 501(a) explicitly recognizes that the fiduciary obligations imposed upon union officials must be tempered with concern for "the special problems and functions of a labor organization."[18] This proviso to the fiduciary standards of section 501(a)

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[13] *Id.*

[14] *See* 29 U.S.C. § 501(a) (1970). Generally, however, the extent of the fiduciary duty in a trust relationship is wide-ranging:

> One of the most important duties of a trustee is that of loyalty to the beneficiaries. While he is administering the trust he must refrain from placing himself in a position where his personal interest or that of a third person does or may conflict with the interest of the beneficiaries. All his conduct which has any bearing on the affairs of the trust must be actuated by consideration of the welfare of the beneficiaries and them alone.

G. BOGERT, LAW OF TRUSTS, 343-44 (5th ed. 1973). *See* II A. SCOTT, THE LAW OF TRUSTS, § 170 (3d ed. 1967). Analysis of the interests of the fiduciary and beneficiary is, of course, the antithesis of per se reasoning, which requires no evaluation of interests, but merely a factual determination that certain patterns of conduct have occurred. See text and note 6 *supra*.

[15] *See* 29 U.S.C. § 501(a) (1970).

[16] *See* 29 U.S.C. § 501(b) (1970).

[17] *Id.*

[18] 29 U.S.C. § 501(a) (1970). *See* H.R. REP. NO. 741, 86th Cong., 1st Sess. 81 (1959), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 7, at 839; Clark, *The Fiduciary*

seems to demand that courts exercise restraint in determining whether to intervene in the affairs of a labor organization.

Apparent in the legislative history of section 501 is congressional recognition that labor organizations are inherently political organizations, and this factor should distinguish the fiduciary obligations applicable to union officials from the fiduciary obligations owed by persons in various other trust relationships, such as trustees of an estate or corporate officers.[19] Certain situations will arise where the political nature of a labor organization might dictate that the obligation owed to that organization demands conduct of a very special nature.[20] There may be times when forceful and aggressive leadership is demanded. There will be other times when passive leadership is more advantageous.

By imposing common-law fiduciary obligations on union officials in the context of the LMRDA, Congress implicitly recognized that the type of leadership which is best for a labor organization and its members as a group will be a matter on which reasonable minds may differ. The political nature of the labor organization is therefore a key factor to be weighed when a court measures an officer's conduct against his fiduciary obligations.

II. THE NATURE OF JUDICIAL INTERVENTION IN UNION AFFAIRS: THE LIMITS OF SECTION 501 FIDUCIARY OBLIGATIONS

In the absence of Supreme Court guidance, the courts of appeals have applied varying standards to determine the propriety of judicial intervention in resolving intraunion conflicts. Generally, the courts of appeals have disagreed on the limits of fiduciary obligations under section 501 concerning the questions of whether those obligations extend beyond the control of money or other property, and whether courts may substitute their judgment for the judgment of union officials in the context of union policy conflicts. This section will examine first the "narrow" and "broad" views of the limits of section 501 fiduciary obligations, and second the disagreement among courts of appeals over judicial intervention in internal union political affairs.

A. *The Narrow and Broad Views of Section 501(a): Fiduciary Obligations Beyond the Control of Money and Property*

Despite the clear language of the statutory provision and its

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Duties of Union Officials under Section 501 of the LMRDA, 52 MINN. L. REV. 437, 446 (1967).

[19] *See* H.R. REP. NO. 741, 86th Cong., 1st Sess. 81 (1959), *reprinted in* I LEGISLATIVE HISTORY, *supra* note 7, at 839; Dugan, *Fiduciary Obligations Under the New Act*, 48 GEO. L.J. 277, 278-79 (1959) (distinguishing various types of fiduciary relationships and obligations).

[20] *But cf.* Carr v. Learner, 547 F.2d 135, 138, 94 L.R.R.M. 2289, 2291 (1st Cir. 1976) (while "a fiduciary relationship implies certain affirmative as well as negative obligations," optimal results are not demanded).

legislative history, two views of section 501(a) have emerged, characterized as the narrow and broad views.[21] Under the narrow view of section 501(a) the fiduciary obligations of union officials are only applicable when the money or property of the union is involved, while under the broad view there is no such limitation on fiduciary obligations.

1. The Narrow View of Section 501(a): The View of the Second Circuit

Gurton v. Arons[22] is considered the leading case adopting the narrow view of section 501(a). In *Gurton*, plaintiffs were members of Local 802 of the American Federation of Musicians; defendants were local and federation officers.[23] Many of the members of Local 802 were not employed full time as musicians but were employed in other types of work as well.[24] Hence any requirements imposed by the local which would require a member to appear during business hours at the offices of the local would tend to discriminate against the participation of part-time musicians in the affairs of the local.[25] Those who could appear at the local's offices were primarily full-time musicians.[26] A mail vote was taken of all members on the question whether future elections of officers should be by secret ballot mail vote or whether a personal appearance should still be required; a substantial majority voted that future elections should be conducted by a mail vote.[27] Plaintiffs proposed amendments to the union bylaws which would have effectively rescinded the mandate of the mail referendum, since the bylaw amendments would have required voting members to register in person at the office of the Secretary during business hours.[28] These proposed amendments were considered and adopted at a membership meeting. The officers of Local 802 appealed the action to the International Executive Board of the American Federation of Musicians, which in turn declared the resolutions null and void on the grounds that they had been adopted at a packed meeting.[29]

Plaintiffs brought suit, claiming that the refusal to enforce the resolutions violated section 501(a),[30] and seeking an order directing the local's officials to act in accordance with the resolutions passed at

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[21] This dichotomy has also been characterized as the "minority" (narrow) view and the "majority" (broad) view. *See* Cefalo v. Moffett, 449 F.2d 1193, 1198 n.15, 78 L.R.R.M. 2142, 2146 n.15 (D.C. Cir. 1971).

[22] 339 F.2d 371, 58 L.R.R.M. 2080 (2d Cir.), *aff'g* Guarnaccia v. Kenin, 234 F. Supp. 429, 57 L.R.R.M. 2310 (S.D.N.Y. 1964).

[23] 339 F.2d at 372, 58 L.R.R.M. at 2080.

[24] *Id.* at 373, 58 L.R.R.M. at 2081.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 372, 58 L.R.R.M. at 2080.

[28] *Id.* at 372-73, 58 L.R.R.M. at 2080-81.

[29] *Id.* at 373, 58 L.R.R.M. at 2081.

[30] *Id.* at 373-74, 58 L.R.R.M. at 2081-82.

the membership meeting.[31] The district court dismissed the actions.[32] The United States Court of Appeals for the Second Circuit affirmed.[33]

The Second Circuit in *Gurton* found no irregularity in the internal means by which the dispute was handled by the union. Therefore, since the actions of the union's supreme governing body were not arbitrary, the court refused to find a breach of fiduciary obligations.[34] With respect to the section 501 claim, the court of appeals observed:

> The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union's affairs than the elected officials is wholly without foundation. Most unions are honestly and efficiently administered and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of unions or their members or to the cause of labor-management relations.[35]

Thus, the *Gurton* court implicitly acknowledged the political nature of the labor union, and recognized that any judicial intervention in union affairs under the authority of section 501 places the court, rather than elected union officials, in the position of determining the best interests of the labor union. The court in *Gurton* wisely refused to make such a determination, finding no breach of fiduciary duty so long as the union officials followed fair and regular procedures in resolving the political controversy.[36]

This aspect of the *Gurton* court's opinion — that courts should be slow to intervene in the internal affairs of unions — has not generated

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[31] *Id.*, 58 L.R.R.M. at 2080.

[32] 234 F. Supp. 429, 444, 57 L.R.R.M. 2310, 2321-22 (S.D.N.Y. 1964).

[33] 339 F.2d at 375, 58 L.R.R.M. at 2083.

[34] *Id.*

[35] *Id.*, 58 L.R.R.M. at 2082-83; *see* Local No. 1, Broadcast Employees v. International Bhd. of Teamsters, 419 F. Supp. 263, 274, 94 L.R.R.M. 2089, 2097 (E.D. Pa. 1976).

The LMRDA policy of minimizing judicial intervention in internal union affairs has been recognized by the United States Supreme Court, and should be considered by a court before intervening in a union's affairs by deciding that an official has breached his or her fiduciary obligations to the union. *See* Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463, 471 & n.10 (1968).

[36] 339 F.2d at 375, 58 L.R.R.M. at 2083.

controversy. However, other language in the opinion has fostered criticism:

> It is . . . clear that Section 501 of the L.M.R.D.A. has no application to the present controversy. A simple reading of the section shows that it applies to fiduciary responsibility with respect to the money and property of the union and that it is not a catch-all provision under which union officials can be sued on any ground of misconduct with which the plaintiffs choose to charge them. If further corroboration for this position be needed it will be found in the legislative history and in the law review articles cited by Judge Tenney in his opinion in the district court.[37]

Thus the *Gurton* court read section 501 as imposing fiduciary obligations on union officials only with respect to the management of the money or property of the union. The difficulty with this view is that the court's observation in fact is directly contradicted by the legislative history of section 501, which indicates a broader definition of the fiduciary obligations of union officials.[38] It was not necessary for the *Gurton* court to find that the fiduciary obligation imposed by section 501 does not extend beyond money or property matters in order for it to hold that the internal affairs of the union generally should be left to the members to manage. Unfortunately, this dictum in *Gurton* has

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[37] *Id.*, 58 L.R.R.M. at 2082 (footnote omitted). Judge Tenney's reading of the legislative history is open to some criticism. In Judge Tenney's discussion of the legislative history of section 501(a), he comments that:

> The legislative history of the Section would appear to also be in accord with defendants' position that the Section relates solely to questions of financial dealings. Thus, during the course of debate, Senators McClellan and Ervin made it quite clear that the Section would relate solely to matters of money and property. See II Leg. History 1129-31 (1959).

234 F. Supp. at 442, 57 L.R.R.M. at 2320. Unfortunately, the debate to which Judge Tenney refers concerned the Senate version of the bill, see text and notes 7-10 *supra*, which was never passed. See text and notes 11-13 *supra*.

This oversight was noted by the Eighth Circuit Court of Appeals in Pignotti v. Local #3 Sheet Metal Workers Int'l Ass'n, 477 F.2d 825, 832-34, 83 L.R.R.M. 2081, 2086-88 (8th Cir.), *cert. denied*, 414 U.S. 1069 (1973) which detailed the legislative history of section 501(a). Nonetheless, the Second Circuit has remained adamant in its position. In Head v. Brotherhood of Ry., Airline and S.S. Clerks, 512 F.2d 398, 88 L.R.R.M. 3057 (2d Cir. 1975), the court of appeals conceded that the *Gurton* analysis of the legislative history was something less than piercing. Nonetheless the court asserted that:

> The legislative history cited in *Pignotti* . . . does not convince us that § 501 was intended by Congress to cover union abuses having nothing to do with money or property. While it is true that § 501 as enacted is somewhat more explicit in its detail than the corresponding provision originally passed by the Senate, see Section 610 of S. 1555, 86th Cong., 1st Sess. 61-62 (1959), the final bill nevertheless defines the fiduciary duties of union officers solely in terms of their treatment of the "money and property" of the union and their financial dealings vis-a-vis the union.

Id. at 401 n.3, 88 L.R.R.M. at 3059 n.3.

[38] See note 37 *supra*.

overshadowed the remainder of an otherwise well-reasoned opinion,[39] and has provided the focus for later criticism of the opinion as a whole by those courts adopting the broad view of section 501(a) fiduciary obligations.[40]

2. The Broad View of Section 501(a): The Majority View

The decisions of the United States Court of Appeals for the Eighth Circuit in *Johnson v. Nelson*[41] and *Pignotti v. Local #3, Sheet Metal Workers International Association*[42] are the leading cases adopting the broad view of section 501(a). In these decisions, the Eighth Circuit explicitly rejected the Second Circuit's view that the scope of section 501(a) is restricted only to money and property matters.[43]

In *Johnson*, plaintiffs were members of a local who had expressed a desire to run a slate of candidates in opposition to those in office.[44] Before they could present any nominations, the officers of the local charged the members involved with violating various union rules.[45] Plaintiffs eventually prevailed in defending these charges, but incurred attorneys' fees in the process.[46] Wishing to compensate the plaintiffs for their expenses, and pursuant to the local's constitutional provisions, the membership approved a resolution that the attorneys' fees be paid by the local.[47] Despite the resolution, the president of the local and the governing body of the International refused to pay the fees.[48] Plaintiffs sued, arguing that the union officers had breached their fiduciary obligations to the union by their refusal to disburse the funds as mandated by the resolution.[49] The district court sustained the plaintiffs' position.[50] On appeal, the defendant officers contended that the fiduciary obligations imposed by section 501(a) related only to financial or money-related responsibilities.[51] The court of appeals disagreed:

> [I]t plainly appears that the statute is broad in its reach. Officers and other union representatives may not act ad-

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[39] *See, e.g.*, Head v. Brotherhood of Ry., Airline & S.S. Clerks, 512 F.2d 398, 400-01, 88 L.R.R.M. 3057, 3058 (2d Cir. 1975).

[40] *See, e.g.*, Pignotti v. Local #3 Sheet Metal Workers Int'l Ass'n, 477 F.2d 825, 834-35, 83 L.R.R.M. 2081, 2086-87 (8th Cir.), *cert. denied*, 414 U.S. 1067 (1973); Sabolsky v. Budzanoski, 457 F.2d 1245, 1251, 79 L.R.R.M. 2993, 2996 (3d Cir.), *cert. denied*, 409 U.S. 853 (1972); Cefalo v. Moffett, 449 F.2d 1193, 1198 n.15, 78 L.R.R.M. 2142, 2146 n.15 (D.C. Cir. 1971).

[41] 325 F.2d 646, 55 L.R.R.M. 2060 (8th Cir. 1963).

[42] 477 F.2d 825, 83 L.R.R.M. 2081 (8th Cir.), *cert. denied*, 414 U.S. 1067 (1973).

[43] See text and notes 21-36 *supra*.

[44] 325 F.2d at 647-48, 55 L.R.R.M. at 2061.

[45] *Id.* at 648, 55 L.R.R.M. at 2061.

[46] Plaintiffs' attorneys' fees totalled $3,475. *Id.*

[47] *Id.*

[48] *Id.* at 648-49, 55 L.R.R.M. at 2062.

[49] *Id.* at 649, 55 L.R.R.M. at 2062.

[50] 212 F. Supp. 233, 256, 52 L.R.R.M. 2047, 2064-65 (D. Minn. 1963).

[51] 325 F.2d at 649, 55 L.R.R.M. at 2062.

> versely to their organization or the members as a group, or acquire a personal interest which is contrary to the interests of the organization. Being trustees the officers must subvert their own personal interests to the lawful mandates and orders of the organization.[52]

Thus, the *Johnson* court read section 501 as imposing a wide range of fiduciary obligations on union officials. The court then indicated that the dispute essentially involved the rights of union members. The union had voted to reimburse plaintiffs for the fees they had incurred, and the defendants had subverted the express will of the membership. The defendants' acts rested on no purported authorization from the union membership.[53] From this, the court concluded:

> [A]ppellants "occupy positions of trust," yet they have breached that trust . . . . [They] have allowed their personal feelings toward appellees to interfere with their duties as officers; have refused to pay the bills even though approved by the membership; have employed various tactics in an unsuccessful attempt to attain local approval for their conduct; have solicited support for their wrongful behavior from the International and have thus assumed positions adverse to the interest of the local union as expressed in a majority vote, duly authorized by the union constitution.[54]

The court thus indicated that the union officers' personal animosity toward union members did not justify interference with the express will of the membership.

The court in *Johnson* made it clear, however, that it was the expressed will of the membership together with a consideration of the interests of the labor organization as a whole which define the scope of union officers' fiduciary obligation. The scope of the officers' fiduciary obligation does *not* emanate from some other source such as an inflexible rule already formulated.

> Of course, it is of prime significance here that a duly authorized constitutional majority of Local's members voted to pay appellees' expenses; that these expenses were incurred pursuing rights which are of substantial benefit to Local as a whole; that a personal animosity toward appellees motivated appellants' refusal to pay the expenses; and that the International's eleventh-hour "policy" directive was not based upon union constitutional authority, and was not, in fact, the real cause for appellants' conduct. We are by no means announcing a rule requiring payment of attorney's

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[52] *Id.* at 650, 55 L.R.R.M. at 2063.
[53] *Id.* at 652-53, 55 L.R.R.M. at 2065.
[54] *Id.* at 653, 55 L.R.R.M. at 2065.

> fees to successful union member litigants . . . regardless of the circumstances.[55]

The court in *Johnson* therefore limited its imposition of liability upon union officials to those situations in which the facts clearly reveal that the officials have acted both without constitutional authority *and* against the best interests of the union and its membership. For purposes of evaluating the fiduciary obligation, the court found that defendants had placed their own self-interest — their personal animosity toward plaintiffs — above the interest of their labor organization, and thereby breached their fiduciary obligation.[56]

In holding that the union officials had violated their fiduciary obligations, the court passed judgment upon the merits of the underlying dispute by indicating that the expenses incurred were of substantial benefit to the local.[57] The court's approach in *Johnson* is thus consistent with standard fiduciary analysis, which requires a determination of the benefits to the interests of the labor organization.[58] However, since the court was not forced to evaluate the political merits of the local's resolution, in fact the holding of the court does not represent a broader reading of the fiduciary obligation than that of the *Gurton* court, save for the dictum in *Gurton* regarding the money and property of the labor organization.[59]

A second case exemplifying the majority view is *Pignotti v. Local #3, Sheet Metal Workers' International Association*.[60] In *Pignotti,* plaintiff was a member of the defendant local.[61] Four of the defendants were individual officers of the local, and two were officers of the International.[62] The local and an association of employers had entered into a collective bargaining agreement whereby the association was to deduct a designated amount from the wages of the local's members and to pay that amount into a pension fund designated by the local.[63] In order to determine the best plan for it to adopt, the local established a committee to study pension plans sponsored by insurance companies, a savings and loan association, and the National Fund of the International.[64] The Committee, however, was unable to reach a decision on which plan to adopt, and a membership meeting was then called to consider the pension matter. At this meeting, the National Fund Plan was rejected.[65] Following a series of meetings at which the different plans were discussed, the International, on a re-

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[55] *Id.* at 653-54, 55 L.R.R.M. at 2066.
[56] *See* 29 U.S.C. § 501(a) (1970).
[57] 325 F.2d at 653, 55 L.R.R.M. at 2065.
[58] See text and note 14 *supra.*
[59] See text and notes 22-36 *supra.*
[60] 477 F.2d 825, 83 L.R.R.M. 2081 (8th Cir.), *cert. denied,* 414 U.S. 1067 (1973).
[61] *Id.* at 827, 83 L.R.R.M. at 2082.
[62] *Id.*
[63] *Id.*
[64] *Id.* at 827-28, 83 L.R.R.M. at 2082.
[65] *Id.* at 828, 83 L.R.R.M. at 2082.

quest from the local president, indicated that the local had not followed proper procedure at the meeting where the members had rejected the National Fund Plan.[66] The International then called a special meeting at which the members present voted to adopt the National Fund Plan.[67] The anti-pension forces in the local circulated a petition for a second special meeting; the local officers, however, did not respond. Accordingly, plaintiffs sued,[68] alleging in part that defendants had breached their section 501(a) fiduciary duties.[69] The federal district court held for the plaintiffs, finding that "defendants . . . set out to obtain the participation of Local #3 in the National Plan, whether the majority of the Union wanted the Plan or not."[70] The Eighth Circuit Court of Appeals affirmed.[71]

In *Pignotti,* defendants attempted to avoid liability under section 501 by contending that their fiduciary duties extended only to situations involving the money or property of the union.[72] The court disagreed, citing *Johnson*[73] as authority for the proposition that broad fiduciary duties are imposed on the officers, agents, shop stewards and other representatives of a labor organization.[74] After reviewing the legislative history of the Act,[75] the court found that "the broader view of fiduciaries' responsibilities is correct, based on Congressional intent and the explicit language of § 501(a)."[76] In so holding, the court explicitly rejected the decision in *Gurton:*

> [I]t appears clear that Gurton v. Arons, based as it was on the legislative history of the Kennedy-Ervin Bill which was amended out of existence, was unduly restrictive of the scope of the fiduciary duties of union officials commanded by § 501, and that Johnson v. Nelson, basing its decision on the legislative history of the Elliot Bill, was properly decided.[77]

The Eighth Circuit in *Pignotti* gave no extensive consideration to the actual nature of a fiduciary obligation. Rather, the court's reasoning adopted the rubric of "broad" duties to resolve questions of internal management of union affairs that in fact may not easily be resolved in cases where the officials' conduct is less egregious. The court may

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[66] *Id.*, 83 L.R.R.M. at 2083.

[67] *Id.* at 829, 83 L.R.R.M. at 2083.

[68] *Id.*

[69] Petitioners, of course, did not claim that either the local or the International had violated section 501, since the section applies only to union officers acting in their individual capacity. *See id.* at 832, 83 L.R.R.M. at 2085.

[70] 343 F. Supp. 236, 242, 80 L.R.R.M. 2699, 2705 (D. Neb. 1972).

[71] 477 F.2d at 836, 83 L.R.R.M. at 2089.

[72] *Id.* at 832, 83 L.R.R.M. at 2085-86.

[73] 325 F.2d 646, 55 L.R.R.M. 2060. See text and notes 44-59 *supra.*

[74] 477 F.2d at 832, 83 L.R.R.M. at 2086.

[75] *Id.* at 833-34, L.R.R.M. at 2086-87. See text and notes 7-20 *supra.*

[76] *Id.* at 835, 83 L.R.R.M. at 2088.

[77] *Id.* at 834, 83 L.R.R.M. at 2088.

have been unduly influenced by the facts of the case, finding that the defendants had thwarted the express wishes of the members of their local.[78] In fact, the defendants had subverted no procedure mandated by the organization and had done only what the union's constitution and bylaws permitted.[79]

B. *Intervention in Intraunion Policy Disputes: The Judicial Role in Union Internal Political Affairs*

In addition to the differences among the circuits in determining whether fiduciary obligations of union officials extend beyond the control of money or other property, the courts of appeals have disagreed on the propriety of judicial intervention in internal union policy disputes. In both *Gurton* and *Pignotti* the defendants committed qualitatively analogous transgressions in that the local officers, after receiving instructions from their internationals, acted in a manner which offended dissident members.[80] However, the resulting views of the courts are diametrically opposed: whereas the court in *Gurton* refused to substitute its judgment for that of the union officials, the court in *Pignotti* readily intervened in the internal affairs of the union. Indeed, the most important difference between *Pignotti* and *Gurton* may lie not in the *Gurton* dictum that section 501(a) does not extend beyond money and property matters of the union, but rather in the contrasting degree of intervention into union internal affairs. The court in *Gurton* refused to embroil itself in the internal political affairs of the local.[81] In contrast, the court in *Pignotti* thrust itself into the internal affairs of the local, siding with the anti-pension forces.[82]

Intervention by courts into internal union affairs contains many pitfalls. To illustrate, consider the facts of the *Pignotti* case from a slightly different perspective. Providing for the welfare of its members is a special function of a labor organization, which a court should con-

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[78] In the district court, Judge Denney concluded that:

> It is clear to the Court that all of the defendants have breached their fiduciary duties in allowing their personal feelings to interfere with their duties as officers. . . . [One] went so far as to use the facilities of Local #3 to publish and influence the views of the members. Then, having finally achieved an affirmative vote, [the defendants] delayed any other vote. Unable to delay any longer, they did the next best thing and refused to implement the vote . . . against the National Plan.

343 F. Supp. at 243, 80 L.R.R.M. at 2705.

[79] In fact, the local president requested a ruling from the International on the propriety of the procedure, and only proceeded after receiving a ruling that the prior procedure had been improper. 477 F.2d at 828, 83 L.R.R.M. at 2083.

[80] See text and notes 22-40 *supra*.

[81] See text and notes 34-36 *supra*.

[82] Even in *Johnson*, where a breach of fiduciary obligations was found, the court had a very clear indication of what the best interests of defendants' labor organization were, and it was plain that the officers had violated their fiduciary obligations. See text and notes 44-59 *supra*.

sider when applying section 501(a).[83] The pension plan in *Pignotti* thus was clearly an element in the welfare of employees at the time the contract with the employers' association was ratified. Moreover, because the members of the local worked for different contractors as work became available, some assurance of portability in the chosen plan was essential. Were it true that the International Plan did provide for portable benefits while the plans of the insurance companies and the savings and loan association did not so provide, the bests interests of the membership would call for adoption of the plan proposed by the defendants.[84] Nonetheless, the court in *Pignotti* gave no consideration to these variables.

When a court does choose to intervene in the affairs of a labor organization, it must be prepared to make a determination of the interests of the union as a group, since without such a determination the court is unable to examine the nature of the fiduciary obligation of union officials under section 501(a).[85] Moreover, if the fiduciary obligation *is* defined in this manner, it becomes at least conceivable that the best interests of the labor organization and its members might not be those expressed in a vote taken at any particular meeting. Hence the conclusion is compelling that even an apparent infringement on the voting rights of union members should not be *conclusive* proof that fiduciary obligations to the labor organization guaranteed under section 501(a) have been breached.[86]

Yet even in circuits adopting the broad view of fiduciary responsibilities under section 501(a), the courts have exhibited a propensity toward per se analysis. Such per se analysis is not suitable when the interest of the labor organization is properly considered.[87]

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[83] *See generally* Tyler, *Section 501(a) and the Proper Function of Unions*, *in* SYMPOSIUM ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT 542, 546-49 (R. Slovenko ed. 1961).

[84] Neither the district court nor the court of appeals investigated the details of the competing plans.

[85] In *Pignotti*, the court hypothetically could have put itself in the position of having to comply with the fiduciary standards imposed by section 409 of the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1109 (Supp. V 1975), if the act had been in effect at the time, since the union officials demonstrated that some union members, not parties to the suit, had vested rights in the pension fund which would be destroyed. *See Pignotti*, 477 F.2d at 836, 83 L.R.R.M. at 2089.

[86] *See* Note, 75 COLUM. L. REV. 1189, 1204-05 (1975). *Cf.* Safe Workers' Organization v. Ballinger, 389 F. Supp. 903, 910-11, 89 L.R.R.M. 2813, 2818 (S.D. Ohio 1974) (a new federal right to vote was created by section 101 of the LMRDA, but section 501(a) created no new federal rights; it provided only an additional forum for enforcing rights already recognized in state courts). *But cf.* Semancik v. UMW, District 5, 466 F.2d 144, 155, 80 L.R.R.M. 3475, 3482 (3d Cir. 1972) ("Union officers, including those on a District Executive Board, have a fiduciary duty under Section 501 of the LMRDA . . . to insure the political rights of all members of their organization.").

[87] In Phillips v. Osborne, 403 F.2d 826, 69 L.R.R.M. 2782 (9th Cir. 1968), the court noted that the general purpose of the LMRDA was to further union democracy, and indicated that Congress turned to the concept of the derivative suit maintainable by shareholders of a corporation: "The basic principle of the derivative suit is that the duties allegedly violated by corporate officers are owed to the organization and only

III. THE OPERATION OF FIDUCIARY OBLIGATIONS IN THE INTERNAL POLITICAL AFFAIRS OF LABOR ORGANIZATIONS: FOUR REPRESENTATIVE ILLUSTRATIONS

Four relatively common scenarios in the context of labor organizations will be considered in this section in order to demonstrate the dysfunctional aspects of per se analysis. Per se analysis of section 501(a) fiduciary obligations falls short where the union official: (1) acts contrary to a union resolution, bylaw or constitutional provision; (2) refuses to hold a meeting or a vote in situations where such are apparently mandated by the rules of the organization; (3) controls a meeting or a vote on a resolution, bylaw or union constitutional amendment; or (4) arguably fails to bargain in the interests of the union.

A. *Alleged Breach of Fiduciary Responsibilities Arising from a Union Official's Failure to Act According to a Union Resolution, Bylaw or Constitutional Provision*

One relatively common situation in which allegations of breaches of fiduciary responsibility arise involves the acts of union officials allegedly in contravention of a resolution, bylaw or constitutional provision of the union. It is submitted that such acts should not be deemed per se violative of section 501(a) since the acts ultimately may be in the best interests of the labor organization.[88] Instead, courts in these situations should engage in close analysis of the fiduciary obligations of the labor officials to determine whether a breach of section 501(a) has actually taken place.

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secondarily or derivatively to the shareholder or representative of all shareholders. Section 501(a), establishing the duties of labor officers, adopts this concept . . . ." *Id.* at 831, 69 L.R.R.M. at 2785-86. Hence in *Phillips*, the court did not permit a non-member of the union to maintain an action under section 501(a). *See id.*, 69 L.R.R.M. at 2786.

This holding seems consistent with the proposition that in order to enforce the fiduciary obligation a court must determine the best interests of a labor organization, since the fiduciary obligations of union officials are owed to unions and their members. The interests of non-members have at best only a remote connection with these obligations. Only when the best interests of the union have been determined can the court decide whether those interests have been sufficiently advanced by the officials' conduct. *See* Holdeman v. Sheldon, 204 F. Supp. 890, 895, 51 L.R.R.M. 2758, 2763 (S.D.N.Y.) *aff'd per curiam*, 311 F.2d 1, 2, 51 L.R.R.M. 2764, 2765 (2d Cir. 1962) (the court refused to permit the intervention of the union on behalf of defendant officers since "it appears to this court that there is a serious question of conflict inherent in the conduct of the two individual defendants and the interests of the union . . ."); *cf.* Morrissey v. Segal, 526 F.2d 121, 127, 90 L.R.R.M. 3169, 3172-73 (2d Cir. 1975) (attorneys' fees incurred by the individual trustees "did not in any way inure to the benefit" of a pension trust and so should not be paid by the trust).

[88] This position merely expresses the conclusion that the fact that union members vote or otherwise express their immediate sentiments does not mean that the resolution, bylaw or constitutional provision is necessarily in the best interests of the labor organization or its members as a group. This approach would not affect other sections of the LMRDA such as section 101(a), 29 U.S.C. § 101(a) (1970), which provides that all union members shall have equal rights, including the right to vote.

Consistent with this approach, actual *compliance* with a union resolution, bylaw or constitutional provision should not be considered per se compliance with the fiduciary obligations imposed by section 501(a).[89] Rather, compliance with the union resolution, bylaw or constitutional provision should be evidentiary only, and not conclusive.

This flexible view of section 501(a) and the nature of the fiduciary obligations itself has not received wide acceptance. For example, in *Morrissey v. Curran*,[90] plaintiffs, members of the National Maritime Union, brought suit alleging violation of section 501 against the president of the union, the secretary-treasurer, an assistant to the president, and the trustees of the union Officers' Pension Plan.[91] Plaintiffs contended that prior payments made to the union trust fund had been made in violation of the union constitution,[92] and accordingly sought an accounting, a judgment for money damages suffered by the union or the trust fund, and an injunction preventing further payments into the trust made on behalf of appointed union employees.[93] The United States District Court for the Southern District of New York held that there in fact had been a breach of defendants' fiduciary obligations: "Since the 1960 Constitution did not authorize the inclusion of the non-officers in the Pension Plan and it is not denied that funds of the NMU have been paid to the Trustees for disbursal to the non-officers under the Pension Plan, plaintiffs are entitled to relief under 29 U.S.C. § 501."[94] The district court therefore granted in toto the relief sought by the plaintiffs.[95] The United States Court of Appeals for the Second Circuit affirmed the district court's finding of a breach of fiduciary duty.[96]

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[89] *See, e.g.*, Sabolsky v. Budzanoski, 457 F.2d 1245, 1252, 79 L.R.R.M. 2993, 2997 (3d Cir.), *cert. denied*, 409 U.S. 853 (1972) (the rule that courts will accept the interpretation of a union's rules by union authorities does not "give carte blanche to union activity which is alleged to constitute a violation of the broad fiduciary duties of union officials under the LMRDA"); Terrazas v. Fitzsimmons, 88 L.R.R.M. 2629, 2632 (C.D. Cal. 1974) (actions taken pursuant to constitutional or bylaw procedures "cannot serve as a predicate for a § 501(a) violation unless such actions are shown to be not 'for the benefit of the organization and its members' or are materially inconsistent with the constitution or bylaws of the Union"); Puma v. Brandenburg, 324 F. Supp. 536, 544, 76 L.R.R.M. 2890, 2895 (S.D.N.Y. 1971) (the union did not violate its constitution when the local adopted a pension plan for its officers, since pensions are part of an officer's salary; but "merely because an Executive Board has the power to set officers' salaries (including pensions), does not mean that it has unlimited power to do so" under section 501). *Contra*, McNamara v. Johnston, 522 F.2d 1157, 1163, 90 L.R.R.M. 2401, 2405 (7th Cir. 1975), *cert. denied*, 425 U.S. 911 (1976) (constitution, bylaws, and resolutions of the union define the union officer's fiduciary responsibilities).

[90] 302 F. Supp. 32, 71 L.R.R.M. 2643 (S.D.N.Y. 1969), *aff'd*, 423 F.2d 393, 73 L.R.R.M. 2640 (2d Cir.), *cert. denied*, 399 U.S. 928 (1970).

[91] 302 F. Supp. at 33, 71 L.R.R.M. at 2643-44.

[92] *Id.* at 34, 71 L.R.R.M. at 2644.

[93] *Id.* at 33, 71 L.R.R.M. at 2644.

[94] *Id.* at 35, 71 L.R.R.M. at 2645.

[95] *Id.* at 36, 71 L.R.R.M. at 2646.

[96] 423 F.2d at 400, 73 L.R.R.M. at 2645. The court of appeals reversed the district court's refusal to declare invalid certain amendments to the union constitution, from which denial the plaintiffs had appealed. *See id.*

The district court in *Morrissey,* in determining that the defendants had breached their fiduciary obligations, utilized a per se approach to the violation of section 501. Violation of the union constitution was, in the view of the court, a per se violation of the fiduciary obligations of section 501.[97] Neither the district court nor the court of appeals considered the actual interests of the labor organization involved to determine the best interests of the membership—especially with respect to the union's appointive employees.[98] The court noted that most of the employees covered by the union trust were entitled to pension benefits under some other plan.[99] Therefore, it is at least arguable that the best interests of the labor organization were served by providing some sort of pension plan for appointive employees in a situation where all of their peers were already entitled to such benefits.[100]

The court's analysis of the fiduciary obligation in *Morrissey* was deficient in failing to consider the possibility that the acts of the union officials had actually served the best interests of the organization as a whole. While violation of a union's resolution, bylaw or constitution should be evidence of a breach of the duty to serve the interest of the union members, the strength of the inference drawn decreases when there is a showing that the interests of the union were actually advanced by the officials' activities. Per se analysis prevents such an approach.[101]

Close scrutiny of the fiduciary obligation of the labor official may well reveal that in certain circumstances, the official has acted in the best interests of the labor organization despite his or her violation

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[97] *See* 302 F. Supp. at 35, 71 L.R.R.M. at 2645.

[98] The district court merely concluded that the fact of payment constituted a violation of section 501. *See id.* The court of appeals employed a similar approach. *See* 423 F.2d at 398-99, 73 L.R.R.M. at 2644-45.

[99] *See* 423 F.2d at 395, 73 L.R.R.M. at 2641.

[100] On the other hand, the district court observed that a 1960 amendment to the union constitution explicitly terminated the authority to include non-officers in the union pension fund by deleting the words "and employees" from the constitutional pension authority. 302 F. Supp. at 34, 71 L.R.R.M. at 2645.

[101] *But cf.* Hood v. Journeyman Barbers, 454 F.2d 1347, 1355, 79 L.R.R.M. 2292, 2297 (7th Cir. 1972) (failure to expend pension funds in accord with the pension fund provisions was itself "clearly in breach of the fiduciary duties in Section 501(a)"); McCabe v. IBEW Local No. 1377, 415 F.2d 92, 97, 72 L.R.R.M. 2014, 2017-18 (6th Cir. 1969) (unauthorized expenditure of union funds violates the union constitution and thus is a breach of section 501); Holdeman v. Sheldon, 204 F. Supp. 890, 894, 51 L.R.R.M. 2758, 2762 (S.D.N.Y.), *aff'd per curiam,* 311 F.2d 1, 2, 51 L.R.R.M. 2764, 2765 (2d Cir. 1962) (legislative history of the LMRDA supports the view that "Congress thought it fundamental that the officers of the union should act only in conformity with the constitution and bylaws of the union . . ."). The narrow view of section 501(a) has dictated to some courts that violation of constitutional procedures cannot be a violation of section 501(a) absent misuse of money or other union property. *See* Head v. Brotherhood of Ry., Airline & S.S. Clerks, 512 F.2d 398, 400, 88 L.R.R.M. 3057, 3058-59 (2d Cir. 1975); Charles v. American Fed'n of Musicians, 241 F. Supp. 595, 598, 59 L.R.R.M. 2207, 2209 (S.D.N.Y. 1965). However, here too the courts engage in per se analysis in approaching the problems of fiduciary responsibility.

of the union resolution, bylaw or constitutional provision. In such a case, it is submitted, a court should find no violation of the section 501(a) fiduciary obligation.

B. *Alleged Breach of Fiduciary Responsibility Arising from a Union Official's Refusal to Hold a Meeting or a Vote*

On some occasions, an allegation of breach of fiduciary obligation involves the failure or refusal on the part of a union official to call a meeting or vote, where some members have scrupulously followed the union procedures for calling the meeting or vote. If the LMRDA in fact were passed to foster democratic practices in labor unions, it would appear that the failure to call the meeting or vote when members have followed required constitutional procedures would amount to the clearest sort of per se breach of fiduciary obligation.[102] Even here, however, a court should be prepared to evaluate the interests of the labor organization in determining whether the union official has breached his or her fiduciary obligation, since the court should also determine whether the union official has subordinated the interests of the labor organization to some other interest in refusing to hold the meeting or vote.

The fiduciary implications of the refusal to hold a meeting or vote are illustrated by the holding of the United States District Court for the Eastern District of Pennsylvania in *Keck v. Employees Independent Association*.[103] Plaintiffs in *Keck* were individual members of the Employees Independent Association,[104] while defendants were officers of the Association.[105] Pursuant to a constitutional provision, plaintiffs had initiated a petition for a referendum aimed at amending the union constitution to allow the Association to merge with another union.[106] Arguing that the Association could not survive the merger, defendants refused to submit the petitions to a vote of the Association, even though the submission was mandated by the union constitution.[107] Plaintiffs contended before the district court that defendants had breached their fiduciary obligations in refusing to bring the petition to a vote.[108] The district court found a breach of the defendants' fiduciary obligations, despite the defendants' contention that the

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[102] *See* Kerr v. Shanks, 466 F.2d 1271, 1274-75, 81 L.R.R.M. 2366, 2368-69 (9th Cir. 1972) (the court refused, however, to determine whether the broad or narrow view should govern, since even under the narrow view defendants had violated the fiduciary obligations imposed by the LMRDA); Moschetta v. Cross, 48 L.R.R.M. 2669, 2671 (D.D.C. 1961) (when the right to a special convention had accrued, failure of the union's General Executive Board to call the special convention constituted a breach of fiduciary duty).

[103] 387 F. Supp. 241, 88 L.R.R.M. 2355 (E.D. Pa. 1974).

[104] *Id.* at 243, 88 L.R.R.M. at 2356.

[105] *Id.* at 244, 88 L.R.R.M. at 2357.

[106] *Id.* at 243-44, 88 L.R.R.M. at 2356-57.

[107] *Id.* at 244, 88 L.R.R.M. at 2357.

[108] *Id.* at 243-44, 88 L.R.R.M. at 2357.

union constitution also prohibited affiliation with another union.[109]

By acting to prevent a merger, defendants in *Keck* sought only to preserve the very existence of the labor organization of which they were officials since affiliation with another union would have brought about the demise of their Association.[110] Thus it is unclear what interest the district court might have felt the officers had favored at the expense of the interests of their labor organization. At most, the union officials had favored the interests of the union *qua* union over the interests expressed by union members. In finding a violation of section 501(a), however, the court gave its own construction to the union constitutional provision, then applied a per se rule in a matter of union policy to find a breach of fiduciary obligation on the part of union officials. The court's conclusion thus seems to require union officials, consistent with section 501(a) obligations, to acquiesce in the destruction of their own union.

A better approach would be that a finding that the union officials' failure to call a meeting or vote when mandated serves as strong evidence that a breach of fiduciary obligations has occurred. However, this inference could be rebutted by a showing on the part of the offi-

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[109] The rationale of the court in resolving this constitutional dilemma in favor of the plaintiffs is the following:

> Even accepting defendants' argument, there is nothing that would have precluded plaintiffs from having accomplished what they intended through a two step process rather than through the one step process which they used. If, instead of petitioning to have the general membership discard the present constitution and replace it with the IBEW Constitution plaintiffs had petitioned to amend Article XI [the article relied upon by defendants in their defense] by deleting the words "provided, that by such affiliation this Association shall not lose its identity nor forfeit any autonomy over its owns affairs" and then had submitted their present amendment, the General Committee would have been required to submit the second petition to the general membership because the defense of Article XI would no longer be available. In form there is a distinction between the two processes; in substance there is none. On balance, we cannot support defendants' interpretation of the Union Constitution when the difference between defendants' and plaintiffs' interpretations is slight and the result of the defendants' interpretation is to deprive the union members of the opportunity to determine the direction their union is to take.

Id. at 252, 88 L.R.R.M. at 2363. *But cf.* Cassidy v. Horan, 66 L.R.R.M. 2521, 2527 (W.D.N.Y. 1967), *aff'd*, 405 F.2d 230, 70 L.R.R.M. 2221 (2d Cir. 1968) (defendants' conduct favoring affiliation with another union does not violate their fiduciary responsibility since their conduct did not involve money or property of the union); Wittstein v. American Fed'n of Musicians, 59 L.R.R.M. 2335, 2336 (S.D.N.Y. 1965) (defendants' failure to bring up plaintiffs' resolution at convention could not violate fiduciary responsibility since no property or funds were involved). The two-step amendment approach suggested by the court is a ruse designed to legitimize court intervention in a matter of internal union policy. The plain fact is that plaintiffs did not pursue a two-step amendment process. It is not inconceivable that support for such a constitutional amendment could not have been enlisted on plaintiffs' side. The court willingly gave its own construction to a constitutional provision. The court's reading of this union's constitution would render all constitutional provisions of unions meaningless, so long as the membership votes to violate such provisions.

[110] *See* 387 F. Supp. at 251-52.

cials that in fact their conduct served the best interests of the organization to which they owed fiduciary obligations.[111]

C. *Alleged Breach of Fiduciary Responsibility Arising from the Union Official's Controlling a Meeting or a Vote on a Resolution, Bylaw or Constitutional Amendment*

A third set of circumstances in which union members may make a claim that the union official has breached fiduciary obligations arises where the union official has exerted considerable influence to dominate a vote on a particular issue. In such a case, the union members may claim that the vote did not reflect the accurate sentiments of the union members. In the absence of allegations of fraud or duress, such a claim is tantamount to a demand that union officials refrain from expressing an opinion on matters of union concern, despite their responsibilities of leadership. When such claims are presented as violations of section 501(a), it would appear that a court is required to distinguish between effective union leadership on the one hand and a fraud upon the union on the other. This analysis, however, is apparently not always undertaken by federal courts presented with such questions.

The United States Court of Appeals for the Second Circuit examined the limits on union officials' attempts to influence the membership in *Coleman v. Brotherhood of Railway and Steamship Clerks.*[112] In *Coleman,* the union passed a resolution at its annual convention creating a new office to be occupied by the outgoing Grand President.[113] Plaintiffs sought an injunction restraining the creation of the office,[114] grounding their claims on an allegation of breach of fiduciary obligations under section 501(a). Plaintiffs maintained that the members of the Grand Executive Council had breached their fiduciary obligations to the union in suppressing information concerning the resolution and in speeding the resolution through the convention.[115] The plaintiffs also alleged that the outgoing Grand President lacked honesty, candor and respect for his fiduciary obligations under the LMRDA.[116] Since *Coleman* was decided in the Second Circuit, the court of appeals applied the narrow view of section 501(a),[117] and since the allegations did not involve the money or property of the union,[118] the court held that the plaintiffs had failed to state a claim

[111] For example, it might be argued that it is no breach of fiduciary obligations to refuse to permit a vote on a resolution which would abrogate all democratic processes in an individual union.

[112] 340 F.2d 206, 58 L.R.R.M. 2220 (2d Cir. 1965).

[113] *Id.* at 206-07, 58 L.R.R.M. at 2220-21.

[114] *Id.* at 207-08, 58 L.R.R.M. at 2222.

[115] *Id.* at 209, 58 L.R.R.M. at 2223.

[116] *Id.*

[117] See text and notes 22-40 *supra.*

[118] Because the narrow view of section 501(a) fiduciary obligations is espoused by the Second Circuit, the court was concerned with the precise nature of the allegations.

under section 501(a).[119]

The application of the inflexible narrow view of the fiduciary obligations of section 501(a) resulted in the court's failure to analyze the facts of *Coleman* in terms of the best interests of the labor union. It would seem that the members of a labor union, when voting on any resolution, have an interest in the availability of all relevant information.[120] Anything less would appear to make the motives of those concealing the information subject to close scrutiny, especially where the information concealed would tend to influence voters in a manner inconsistent with the wishes of the union officials.[121]

The United States District Court for the Eastern District of Pennsylvania approached a similar problem in *Highway Truck Drivers Local 107 v. Cohen*,[122] unencumbered by the narrow view of fiduciary obligations. In *Cohen*, plaintiffs were rank-and-file members of the union, and defendants were the union officials.[123] Multiple civil and criminal actions were brought against the defendants, alleging a "conspiracy to cheat and defraud the union of large sums of money."[124]

The court concluded:

> The charges of the plaintiff refer to the voting on Resolution No. 611 and not to the mishandling of any money or property of the Union. The complaint is that the membership was not given all the information it needed for voting intelligently and that the Resolution was rushed through the convention. There are also allegations that [the conduct of the outgoing Grand President] fell short of that required of him. These claims fail to allege anything which would constitute a violation of [section 501].

340 F.2d at 209, 58 L.R.R.M. at 2223.

[119] *Id.*

[120] *See* Blanchard v. Johnson, 388 F. Supp. 208, 87 L.R.R.M. 2371 (N.D. Ohio 1975), *aff'd in part*, 532 F.2d 1074, 91 L.R.R.M. 3070 (6th Cir.), *cert. denied*, 429 U.S. 869 (1976), where the court held that:

> [T]he duties created in § 501(a) must include the duty to keep the membership informed on matters which they, the rank and file, must decide. That is not meant to say that union officials may not state their own views and take a stand on the issues. They must not, however, use their own right to discuss union matters as an excuse to withhold pertinent, relevant information. It is the duty of union leadership under § 501, as fiduciaries, to see that the lines of communication and dissemination of views and opinions are kept open and working, especially as to matters on which members will be asked to vote.

388 F. Supp. at 214, 87 L.R.R.M. at 2374. *Cf.* Horner v. Ferron, 362 F.2d 224, 231 n.10, 62 L.R.R.M. 2425, 2429 n.10 (9th Cir.), *cert. denied*, 385 U.S. 958 (1966) ("Ratification of a fiduciary's unauthorized acts cannot be effectuated unless there has been a full disclosure of the facts"); Puma v. Brandenburg, 324 F. Supp. 536, 545, 76 L.R.R.M. 2890, 2896 (S.D.N.Y. 1971) (since members were fairly informed when voting on an officer's pension plan, there was no breach of fiduciary duty).

[121] *See, e.g.*, Cefalo v. Moffett, 333 F. Supp. 1283, 1287-88, 78 L.R.R.M. 2137, 2140 (D.D.C.), *aff'd per curiam*, 449 F.2d 1193, 78 L.R.R.M. 2142 (D.C. Cir. 1971) (the defendants violated section 501 by failing to advise the union membership that the union officers and staff had a pecuniary conflict of interest because their salaries would increase if a merger with another labor organization were approved).

[122] 182 F. Supp. 608, 45 L.R.R.M. 3050 (E.D. Pa. 1959), *aff'd*, 284 F.2d 162, 47 L.R.R.M. 2040 (3d Cir. 1960), *cert. denied*, 365 U.S. 833 (1961).

[123] 182 F. Supp. at 610, 45 L.R.R.M. at 3051.

[124] *Id.*

The members of the local passed a resolution by which the local would pay the legal expenses of the defendants, since the actions were purportedly directed at the union itself, rather than solely at the officers.[125] Plaintiffs sought an injunction to prevent the use of union funds in this manner, claiming *inter alia* that the use of union funds by the officials to pay their own legal expenses violated section 501(a) regardless of the passage of the resolution.[126]

In passing on the section 501(a) claim, the district court relied on the ultra vires concept of corporation law in order to evaluate correctly the interests of the labor organization and its members as a group:

> The defendants argue that this Court is precluded from passing upon the merit or propriety of the Resolution in question is peculiarly within the competence of a court to tween the merit of a resolution and its legality. The latter question is pecularly within the competence of a court to pass upon and can not be abandoned finally to the organization. When a serious question arises as to whether a particular act is within the legitimate aims and purposes of a labor union as expressed by its constitution and by-laws, the Court must ultimately resolve the matter so as to preserve on the one hand the rights of the union and on the other those of the individual members of that union.[127]

Consistent with this approach, the district court undertook to examine the interests of the labor union in allotting funds to compensate the defendants for their legal expenses in the actions brought against them. The court concluded that the interests of the union were not sufficiently furthered to justify the resolution.[128] This ultra vires approach maximizes the opportunity for the court to evaluate correctly the interests of the union and its members as a group, and has been adopted by at least one other federal court.[129]

While the facts in *Cohen* were sufficient to allow the district court to evaluate the interests of the union and its members, it may not always be possible to determine when the union official has been guilty of bad faith in not giving to his or her union all the information available. Close cases should not be subjected to per se analysis, since fiduciary analysis provides a superior approach. Moreover, even if it cannot be determined that an officer has acted in his own interest or the interest of a third party at the expense of the labor organization, the court may still be able to utilize the ultra vires doctrine by which

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[125] *Id.* at 616, 45 L.R.R.M. at 3056.

[126] *Id.* at 610, 45 L.R.R.M. at 3052.

[127] *Id.* at 618-19, 45 L.R.R.M. at 3058-59 (citations omitted).

[128] *Id.* at 619-22, 45 L.R.R.M. at 3059-61.

[129] *See* Morrissey v. Curran, 423 F.2d 393, 399, 73 L.R.R.M. 2640, 2644 (2d Cir.), *cert. denied*, 399 U.S. 928 (1970) (without the ultra vires doctrine, "the officers could find sanctuary by putting through a constitutional amendment or by-law retroactively to legitimize their former derelictions of duty").

union resolutions, bylaws or constitutional provisions may be invalidated. The ultra vires approach focuses on the conduct of the union membership as a whole, rather than on the conduct of the individual officers. In close cases, that is where the focus of the court should be.

D. *Alleged Breach of Fiduciary Responsibilities Arising from a Claimed Failure to Bargain in the Interest of the Labor Organization*

A fourth area in which union members have alleged breaches of fiduciary obligations involves the collective bargaining process, one of the most sensitive areas of activities undertaken by union officials. Whenever a collective bargaining agent reaches agreement with management, there is a substantial likelihood that some members of the bargaining unit will be dissatisfied.[130] In addition to alleging a breach of the union official's duty of fair representation,[131] dissatisfied union members occasionally have sought damages under section 501(a).[132]

Courts addressing allegations of breaches of fiduciary obligation grounded in collective bargaining agreements usually have refused to find a violation of section 501(a). For example, in *Echols v. Cook*,[133] the United States District Court for the Northern District of Georgia concluded that:

> The officers and job stewards of the Union have been selected in the democratic process as provided by the Constitution and Bylaws of the Union and, as a result, are the designated representatives of the employees. What the plaintiffs now request this Court to do is to substitute its judgment for the judgment of the duly elected collective bargaining representative of the plaintiffs. Even if it were to be admitted that the action of the Union here was unwise, this is not an issue for determination by the Court. For this Court to seek to determine whether or not the decision made in this matter was wise would be for the Court to make itself the collective bargaining representative. It would also put the Court in the position of a compulsory

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[130] *See, e.g.*, Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953) ("[t]he complete satisfaction of all who are represented is hardly to be expected"); Carr v. Learner, 547 F.2d 135, 138, 94 L.R.R.M. 2289, 2291 (1st Cir. 1976).

[131] Where union members claim a failure of union officials to represent their interests fairly, the members may bring an action under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1970). *See, e.g.*, Vaca v. Sipes, 386 U.S. 171, 177 (1967).

[132] On a purely pragmatic level, it is difficult to justify a claim grounded in a violation of § 501(a) involving allegations of failure to bargain effectively, since the plaintiff's remedy seems more properly effectuated in a fair representation suit or in a decertification petition brought before the National Labor Relations Board. *See, e.g.*, Carr v. Learner, 547 F.2d 135, 138, 94 L.R.R.M. 2289, 2290 (1st Cir. 1976).

[133] 56 L.R.R.M. 3030 (N.D. Ga. 1962).

> arbitrator, whereas the parties have never agreed that the Court could so act.[134]

The district court quite properly abstained from intervention in the collective bargaining process.

The United States Court of Appeals for the First Circuit adopted a similar position in *Carr v. Learner*,[135] where the plaintiffs alleged that their collective bargaining representative had failed to secure a more favorable pension plan in the course of negotiations.[136] Affirming the district court's dismissal of the plaintiff's action,[137] the court of appeals succinctly denied the validity of the plaintiff's claim: "[W]e do not think that the fiduciary duty imposed by [section 501(a)] is violated in a case where nothing more is alleged than poor performance as a collective bargaining agent."[138]

Any remedy imposed in an action alleging violation of section 501(a) resulting from "poor performance as a collective bargaining agent" would require the court to place itself in the position of bargaining for the union. Clearly, a court is not qualified to operate as a bargaining representative, and should not attempt to enforce a fiduciary obligation under section 501(a) in the context of the collective bargaining process. Thus, when section 501 violations are alleged in situations involving the collective bargaining process, courts should refuse categorically to find violations of section 501(a). This may be the one instance in which a per se approach to section 501(a) is justified.

CONCLUSION

Those courts which have decided issues concerning fiduciary obligations with respect to the internal political affairs of a union have demonstrated a propensity for the per se type of approach utilized in some areas of antitrust law. It has been submitted that the per se approach does not necessarily yield correct results. Instead, courts should evaluate the interests of the labor organization and its members as a group with respect to the specific matter in question before passing judgment on the conduct of a union official.[139]

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[134] *Id* at 3032; *see* Aikens v. Abel, 373 F. Supp. 425, 431, 85 L.R.R.M. 2786, 2790 (W.D. Pa. 1974). *But cf.* Schonfeld v. Rarback, 61 L.R.R.M. 2043, 2043-44 (S.D.N.Y. 1965) (plaintiffs' allegations that union officers entered into "sweetheart" contracts with employers stated a claim under section 501).

[135] 547 F.2d 135, 94 L.R.R.M. 2289 (1st Cir. 1976).

[136] *Id.* at 136-37, 94 L.R.R.M. at 2289.

[137] *Id.* at 138, 94 L.R.R.M. at 2291.

[138] *Id.*, 94 L.R.R.M. at 2290-91.

[139] *Cf.* Parks v. IBEW, 314 F.2d 886, 907-11, 52 L.R.R.M. 2281, 2296-300 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963) (the court refused to intervene in internal union affairs on the grounds that the officers of the international had pursued the interests of the international, even though the officers had opposed the interests of a local and its members).

Some commentators have felt that the per se approach is a proper method of dealing with intraunion disputes. *See, e.g.*, Note, 5 GOLDEN GATE L. REV. 367, 405-06

This evaluative approach is not meant to provide a haven for racketeers or thugs who happen to find their way into union office, nor is it meant to retard the growth of democracy in labor unions. Indeed, the growth of union democracy should be one factor considered in weighing the interests of the labor organization itself in the resolution of any allegation of breach of fiduciary obligation. Rather, it is a plea for rationality when dealing with fiduciary matters. Courts simply are unable to conduct union affairs better than the union officials themselves. Judicial management of union internal political affairs is no better than the evils which section 501(a) was designed to correct.

(1975); Comment, 37 LA. L. REV. 875, 894-95 (1977). However, where the interests of the union are complex, it is submitted that a court asked to deal with fiduciary obligations under section 501 maximizes the opportunity for a correct result by analyzing the activities of the union officials in the context of the environment of the particular union involved.

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